

Appeal Decision

Site visit made on 30 August 2025

by **A U Ghafoor BSc (Hons) MA MRTPI FCI fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 19 September 2025

Appeal Ref: APP/K3605/X/23/3325145

Poynters Lea, Pointers Road, Cobham KT11 1PQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (hereinafter the “1990 Act”) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Ray Gillon and Deborah Sproul against the decision of Elmbridge Borough Council. The application ref 2023/0051, dated 9 January 2023, was refused by notice dated 6 March 2023.
- The application was made under section 191(1)(a)(b) of the 1990 Act. The use for which a LDC is sought is described in the application form as follows: *3 x timber outbuildings - (Sheds 1, 2 and 5 as shown on drawing number: SD100) in use for ancillary purposes in relation to Poynters Lea.*

Decision

1. The appeal is dismissed.

Reasons

2. The **main issue** is whether the Council’s decision to refuse the LDC was well-founded. The appellants maintain that the area outlined red in the LDC site plan forms residential curtilage. They contend that existing outbuildings are lawful due to the passage of time because they were substantially completed four years before the date of the LDC application – on or before 9 January 2019. Additionally, the claim is that the LDC application site has been continuously used as curtilage land to Poynters Lea since 2013. Putting to aside for one moment immunity from enforcement action, the Council refused the LDC on the sole ground that the outbuildings were unlawful because they have been built on land falling outside the curtilage to Poynters Lea. As this is a fundamental point in dispute, I must consider this first.
3. In the context of this appeal, the important point to keep in mind is that curtilage defines an area of land in relation to a building and not a use of land. It is relevant to s55(2)(d)¹ of the 1990 Act and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
4. It is often the case that the concept of “curtilage” and “planning unit” are confused: they are distinct and separate. The planning unit is a concept evolved as a means of determining the most appropriate physical area against which to assess the materiality of change in the use of land. The two will sometimes cover the same area on the ground, but that will not always be the case and does not in any event mean that they are the same thing.
5. My starting point is the planning unit. The leading authority on planning unit is the case of *Burdle*². Starting with the unit of occupation, the assessment turns on the concept of physical and functional separation. *Burdle* suggests three broad tests for determining the

¹ The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land... the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such.

² *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207.

appropriate planning unit. The assessment is a matter of fact and degree, and as a useful working rule, it should be assumed that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.

6. Poynters Lea is a detached dwellinghouse with a side/rear garden. Poynters Cottage is to the appeal dwelling's northwest, the River Mole to the north, fields to the east and Ty Bryn to the southeast. The LDC application site includes all land occupied by the appellants. The appellants acquired land roughly situated to the south and southeast of the dwelling. These parcels are depicted in green and orange colour, at figure 11 to the appellants' statement of case. All the land forms a single unit of occupation in residential use. As a matter of fact and degree, I find that Poynters Lea, outlined in red on the LDC application site plan, constitutes a single planning unit.
7. There is no all-encompassing, authoritative definition of the term 'curtilage'. It derives from conveyancing law where it was and remains a term of art. There is considerable case law on the interpretation and application of the term, and the appeal parties refer to some of these relevant authorities. There is no need for me to repeat or summarise these judgements, because the appeal parties are aware of the leading cases. That said, the earlier case law goes back to *Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1 P&CR 195 and *Methuen-Campbell v Walters* [1979] 1 QB 525. The line of judgments thereafter, and the findings therein, serve to illustrate that determining the curtilage is a matter of fact and degree based on the circumstances and evidence presented in each case³. To my mind, there is a common thread and that is that for land to fall within curtilage, the claimed curtilage land must be so intimately associated with the building, that it forms part and parcel of the building.
8. There is no evidence to cast doubt over the claim that in the past, the LDC application site was used for incidental residential purposes. For example, the green and orange areas were used in connection with Pointers or Ty Bryn. Information about the historic use suggests the walled garden might have been used for vegetable or plant growing. In about 2019, the areas were acquired by the appellants and now form part of their ownership. The areas are landscaped with ornamental plants, the grass is mowed, and the walled garden area is, and was, separately accessed. The claim is that the curtilage extends over the expanded garden where the land was clearly capable of such use. However, the use of land incidental to the enjoyment of a dwellinghouse is not determinative of land falling within curtilage: the LDC application site may well be used as residential garden without being part of the curtilage to Poynters Lea.
9. Curtilage does not need to be confined to a small area. Nevertheless, the use of more land for garden related purposes, than may previously have been the case, does not automatically mean that additional land falls within the curtilage of the dwelling. In terms of the considerations of layout and function, proportionality may be relevant. Poynters Lea is a detached building, but the LDC application site extends over three large parcels of land. The dwelling is set some distance from the walled garden and outbuildings: it is not physically proximate to the walled garden. It lies some way off beyond adjoining land that is physically disconnected and separated by permanent barriers. The fence, gate and wall give an

³ For example, *Attorney-General ex rel. Sutcliffe and Others v Calderdale Borough Council* [1983] 46 P&CR 399, *Dyer v Dorset CC* [1988] 3 WLR 213, *McAlpine v SSE* [1995] 159 L.G. Rev. 429, *R (oao Sumption) v Greenwich LBC* [2007] EWHC 2276 (Admin), *Challenge Fencing Ltd v SSHCLG* [2019] EWHC 553 (Admin), *Skeirrits of Nottingham Ltd v SSETR (No. 1)* [2000] EWCA Civ 60, *Lowe v First Secretary of State* [2003] EWHC 537 (Admin), and *Burford v SSCLG* [2017] J.P.L.1300, and *Hampshire CC & the Open Spaces Society & Others v SSEFRA & Blackbushe Airport Ltd* [2020] EWHC 959 (Admin), [2021] EWCA 398, [2020] JPL 1359.

impression of land that is disconnected and lacks intimacy with the areas immediately around and about the dwellinghouse.

10. In addition, the LDC application site, especially the green and orange areas, appear as self-contained parcels of land. They cannot be reasonably described as forming one enclosure with land attached to or immediately around and about the dwellinghouse, and they lack a degree of association given the spatial and visual separation of these areas from the dwelling.
11. In my mind, these characteristics weakens their actual and perceived relationship with the property and land immediately around and about the building. It is reasonable to conclude that the size of the original curtilage was proportionate to the needs and function of this moderately sized property. Conversely, taken together, the land claimed to fall within the curtilage form an expansive area. I am not persuaded that the size of the LDC application site and its useful function in relation to Poynters Lea are proportionate to the size and function of the property. There is not an association between what is essentially an additional piece of garden and the dwelling. In terms of past and present ownership and use or function, there is a degree of connection between the LDC application site and the dwelling. However, in my judgment and fatally for the appeal, this association is not of such a close relationship or at such an intimate level that these areas form part and parcel of the dwelling.
12. Consequently, taking a reasonable view, in all probability and as a matter of fact and degree, I find that, at the date of the application, the 3 x timber outbuildings in use for ancillary or incidental purposes do not fall within the curtilage to Poynters Lea and fail the basic criteria of Class E to the GPDO.
13. It seems clear to me that the appellants placed all their eggs in one basket labelled "curtilage". There is limited evidence to demonstrate the outbuilding were substantially completed on or before the relevant date. Furthermore, having regard to powers available to me to modify the description and issue an LDC, that route is also not possible. This is because the evidence presented is unclear and unambiguous and is likely to be prejudicial to the appeal parties as their respective cases have not been formulated or made on that basis.
14. My decision is likely to be disappointing, but I must determine the appeal based on the written submissions and my analysis and evaluation of the evidence before me. As the Planning Practice Guidance says at paragraph: 009 Reference ID: 17c-009-20140306, a refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented. In terms of evidence related to immunity or incidental residential garden use, that is relevant in this appeal.

Conclusion

15. Drawing all the above threads together, I find that the quantum of the evidence presented does not clearly or unambiguously show that, if the proposed development had occurred on the application date, it would have been lawful for planning purposes. The decision to refuse the LDC application was well-founded albeit for different reasons. I conclude that the appeal should fail. I exercise accordingly the powers transferred to me in section 195(3) of the Act.

A U Ghafoor

INSPECTOR